

**** E-filed December 13, 2011 ****

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

AREAS USA SJC LLC,

No. C11-04487 HRL

Plaintiff,

v.

MISSION SAN JOSE AIRPORT LLC; and
MISSION YOGURT, INC.,

Defendants.

**ORDER (1) DENYING AS MOOT
PLAINTIFF'S MOTION TO DISMISS
DEFENDANT'S COUNTERCLAIMS
AND (2) DENYING AS MOOT
PLAINTIFF'S MOTION TO STRIKE
DEFENDANT'S AFFIRMATIVE
DEFENSES**

[Re: Docket No. 22, 23]

Plaintiff Areas USA SJC LLC ("Areas") sued Mission San Jose Airport LLC and Mission Yogurt, Inc. (collectively "Mission" or "defendants") alleging breach of a subcontract entered by and between the parties for the development and operation of a concession stand in the Norman J. Mineta San Jose International Airport. Dkt. No. 1 ("Complaint"). Mission answered the complaint and counterclaimed for fraud in the inducement and intentional misrepresentation. Dkt. No. 11 ("Answer"). Areas now moves to dismiss Mission's counterclaims and to strike Mission's affirmative defenses. Dkt. Nos. 22, 23. Rather than filing opposition briefs to the motions, defendants filed an Amended Answer on December 6, 2011, 21 days after plaintiff filed its motions. Dkt. No. 27.

A party may amend its pleading once as a matter of course within 21 days after service of a motion under Fed. R. Civ. P. 12(b). Fed. R. Civ. P. 15(a)(1)(B). As the Amended Answer was timely filed, it is now the operative responsive pleading by defendants. Therefore, the plaintiff's

1 motions to dismiss and to strike are DENIED as MOOT. The hearing currently set for December 13,
2 2011 is VACATED.

3 **IT IS SO ORDERED.**

4 Dated: December 13, 2011



5 HOWARD R. LLOYD
6 UNITED STATES MAGISTRATE JUDGE
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Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.